IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 168 OF 2006

M/s. Alfa Textiles ...Petitioners

vs.

M/s. The Indian Malasses

Company Ltd ...Respondents

Mr. S.P. Bharti for the petitioner.

Mr. R. Narichania i.by. Mulla and Mulla

for the respondent.

CORAM: S.J. VAZIFDAR, J.

DATE : 20TH JUNE, 2006.

P.C. :

1. This is a petition under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award dated 5.10.2005 passed by the sole arbitrator.

2. The disputes and diffidences referred to arbitration were in receipt of a storage agreements dated 9.10.2000 wherein the respondent was to store the furnace oil belonging to the petitioner.

3. That the charges were levied in accordance with the agreement is not denied. That the charges were paid in accordance with the terms of the agreement is not denied. It is however contended that there was a trade practice to the contrary whereby the charges ought to have been levied not as per the agreement but as per the alleged trade practice.

4. The trade practice was not proved before the learned arbitrator. The learned arbitrator was bound by the terms of the contract and indeed could not have gone contrary thereto. In these circumstances, the arbitrator was perfectly justified in rejecting the claim for refund based on the alleged trade practice.

5. Faced with this it was submitted on behalf of the petitioner that infact the tanks were not made available as per the agreement. The arbitrator has dealt with this issue in detail. It appears that at one stage there was some difficulty in making the tank available. This issue was resolved by a tri-partitie agreement by one party and one Mr. Sreenath. There was no dispute that if this tri-partite agreement contained in a letter dated 12.10.2000 was established the petitioner's claim ought to have been rejected. The petitioner's contention before the arbitrator was that the letter was written under coercion. This was a pure question of fact which has been dealt with in detail by the Arbitrator. It is impossible to state that the view taken by the arbitrator was perverse, unsustainable or had been arrived at without taking the facts into consideration. This being essentially question of fact no interference under section 34 is warranted.

6. Lastly it was submitted that the costs awarded were exorbitant. The learned arbitrator has dealt with this issue also in detail. The costs were based on the fact that some of the claims were ridiculously high and only one of the claims had been awarded. The learned arbitrator has infact not granted the actual costs incurred by the respondent. The total claim which kept changing was in excess of Rs.50 lacs. The statement of claim was amended from time to time. Seven witnesses were examined before the arbitrator.

7. In the circumstances no interference is called for with the award of the costs either.

. Petition is therefore dismissed.

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